

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

ABATE CONSTRUCTION, INC.<sup>1</sup>

Employer

and

Case 4–RC–19794

METROPOLITAN REGIONAL COUNCIL  
OF PHILADELPHIA AND VICINITY,  
UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, AFL–CIO<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a Pennsylvania corporation engaged in the construction business with its principal office located in Frazer, Pennsylvania. The parties stipulated to the appropriateness of the unit but disagree as to the unit placement of Frank Cottom and Eugene Reisenger. The Petitioner would exclude Cottom and Reisenger, whom the Employer only recently hired, on the grounds that they are independent contractors. Alternatively, the Petitioner contends that if Cottom and Reisenger are found to be employees, they should nevertheless be excluded from the unit as either casual employees or as lacking a community of interest with unit employees. The Employer argues that Cottom and Reisenger are regular full-time carpenters who share a community of interest with employees in the unit. I find that there is insufficient record evidence to determine the unit placement of Cottom and Reisenger. Accordingly, I shall permit **Frank Cottom** and **Eugene Reisenger** to vote subject to challenge.

The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full time and regular part-time carpenters employed by the Employer at its 56 Sproul Road, Frazer, Pennsylvania facility, excluding all other employees, office clerical employees, professional employees, guards and supervisors defined in the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>3</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

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<sup>3</sup> Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**METROPOLITAN REGIONAL COUNCIL OF PHILADELPHIA  
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**LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the *full* names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 29, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **November 5, 1999**.

Dated October 22, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan  
**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Region Four

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